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BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

CITY OF SAMMAMISH

DECISION

FILE NUMBER: PLN2004-00027

APPELLANT: Walter T. Pereyra
C/o J. Richard Aramburu
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Seattle, WA 98104
rick@aramburu-eustis.com

RESPONDENT: City of Sammamish
C/o Kim Adams Pratt & Alexandra L. Kenyon
Kenyon Disend, PLLC
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APPLICANT: Clifford and Pauline Cantor
C/o Samuel A. Rodabough
11820 Northrup Way, Suite E200
Bellevue, WA 98005
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TYPE OF CASE: Appeal from decision approving a short subdivision

EXAMINER DECISION: DENY IN PART

DATE OF DECISION: July 10, 2018

INTRODUCTION ¹

Walter T. Pereyra ("Pereyra") appeals from the May 15, 2017, preliminary approval by the City of Sammamish Department of Community Development ("Department") of the Clifford and Pauline Cantor ("Cantor") two-lot short subdivision application. (Exhibit 1 ²)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

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Pereyra filed the subject appeal on June 5, 2017. (Exhibit 9001) The appeal was timely filed in accordance with Sammamish Municipal Code (“SMC”) 20.10.080(1).³

The subject property is located at 627 208th Avenue SE.

The Sammamish Hearing Examiner (“Examiner”) held a telephonic prehearing conference with the parties on June 21, 2017. The prehearing conference is memorialized in Exhibit 9013.

The Examiner convened an open record hearing on April 4, 2018. The City gave notice of the hearing as required by SMC 20.10.180(2). (Exhibit 71) At the start of the second hearing day on April 5, 2018, Pereyra and Cantor requested that the hearing be stayed for a lengthy period to allow them to pursue settlement discussions. June 19, 2018, was subsequently agreed upon as the continuation date, if needed.. The settlement discussions were unsuccessful. Thus, the hearing was reconvened and concluded on June 19, 2018. At the close of the hearing all principal parties agreed to allow the Examiner five additional working days in which to render his decision.

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c), the Examiner entered the following administrative exhibits into the hearing record:

Exhibit 9001:	Appeal of Type 2 Land Use Decision to Hearing Examiner, filed June 5, 2017
Exhibit 9002:	Attachment 1 to Appeal of Type 2 Land Use Decision to Hearing Examiner, filed June 7, 2017
Exhibit 9003:	Attachment 2 to Appeal of Type 2 Land Use Decision to Hearing Examiner, filed June 5, 2017, with Exhibits A – C to be cited as Exhibits 9003.A – 9003.C
Exhibit 9004:	Notice of Appearance (Respondent), filed June 7, 2017
Exhibit 9005:	Letter, Examiner to Principal Parties, June 8, 2017
Exhibit 9006:	Letter, Aramburu to Examiner and Principal Parties, June 9, 2017
Exhibit 9007:	Notice of Unavailability (Aramburu), filed June 9, 2017
Exhibit 9008:	Applicant’s Notice of Unavailability (Cantor), filed June 12, 2017
Exhibit 9009:	E-mail string, Examiner and Principal Parties, June 9 – 12, 2017 (setting conference date and time)
Exhibit 9010:	Notice of Telephonic Prehearing Conference, issued June 13, 2017
Exhibit 9011:	Applicants’ Motion for Summary Dismissal of Untimely Appeal, filed June 19, 2017
Exhibit 9012:	Declaration of Clifford Cantor in Support of Applicants’ Motion for Summary Dismissal of Untimely Appeal, filed June 19, 2017, with Exhibits 1 – 8 to be cited as Exhibits 9012.1 – 9012.8
Exhibit 9013:	Order Memorializing a Prehearing Conference, issued June 21, 2017

³ Substantive aspects of this appeal are vested to the 1999 version of the SMC, relevant portions of which will be found in Exhibit 43. Procedural aspects are subject to current code provisions. Code citations in the Introduction, Legal Framework, Notice of Right of Reconsideration, and Notice of Right of Judicial Review are to the current SMC; all other code citations, unless expressly noted, are to the 1999 version of the SMC as found in Exhibit 43.

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- Exhibit 9014: City's Response to Applicant's Motion to Dismiss, filed June 29, 2017
- Exhibit 9015: Declaration of Lita Hachey in Support of City's Response to Applicant's Motion to Dismiss, filed June 29, 2017
- Exhibit 9016: Appellant's Opposition to Motion to Dismiss by Applicant, filed June 29, 2017, including Appendices A and B, to be cited as Exhibits 9016.A and 9016.B
- Exhibit 9017: Declaration of Carol Cohoe in Support of Opposition to Motion to Dismiss, filed June 29, 2017
- Exhibit 9018: E-mail exchanges between Applicant Cantor and Appellant's counsel, Aramburu, June 30, 2017 (Provided to Examiner at Applicant's request.)
- Exhibit 9019: E-mail exchanges between Applicant Cantor and Appellant's counsel, Aramburu, June 30, 2017 (Provided to Examiner at Applicant's request. There is substantial overlap between Exhibits 9018 and 9019.)
- Exhibit 9020: Interlocutory Order Denying Motion to Dismiss, issued July 7, 2017
- Exhibit 9021: Motion for Summary Relief on Vesting Issues, filed August 18, 2017
- Exhibit 9022: City's Response to Motion for Summary Relief on Vesting Issues, filed September 15, 2017, with Exhibits A – C to be cited as Exhibits 9022.A – 9022.C
- Exhibit 9023: Notice of Appearance (Applicant), filed September 15, 2017
- Exhibit 9024: Applicant's Response to Motion for Summary Relief on Vesting Issues, filed September 15, 2017
- Exhibit 9025: Declaration of Clifford Cantor Re: Applicant's Response to Motion for Summary Relief on Vesting Issues, filed September 15, 2017, with Exhibits 1 – 13 to be cited as Exhibits 9025.1 – 9025.13
- Exhibit 9026: Interlocutory Order on Vested Rights Motion and Change of Time for Telephonic Conference, issued October 2, 2017
- Exhibit 9027: (Appellant's) Motion for Reconsideration of Interlocutory Order on Vested Rights Motion, filed October 6, 2017, with Appendices A – C to be cited as Exhibits 9027.A – 9027.C
- Exhibit 9028: E-mail, Examiner to Principal Parties, October 10, 2017 (Documentation of results of prehearing conference)
- Exhibit 9029: City's Response to Motion for Reconsideration of Interlocutory Order on Vested Rights Motion, filed October 10, 2017
- Exhibit 9030: Applicants' Response to Motion for Reconsideration of Interlocutory Order on Vested Rights, filed October 13, 2017, with Appendix Tabs A – C to be cited as Exhibits 9030.A – 9030.C
- Exhibit 9031: Declaration of Clifford Cantor Re: Response to Motion for Reconsideration, filed October 13, 2017, with Exhibits 1 – 6.3 to be cited as Exhibits 9031.1 – 9031.6.3
- Exhibit 9032: Interlocutory Order on Motion for Reconsideration, issued October 20, 2017
- Exhibit 9033: City of Sammamish's Motion for Continuance of January 2018 Hearing Date, filed January 2, 2018

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- Exhibit 9034: Declaration of Kim Adams Pratt in Support of City of Sammamish's Motion for Continuance of January 2018 Hearing Date, filed January 2, 2018, with Exhibit A to be cited as Exhibit 9034.A
- Exhibit 9035: E-mail, Hearing Examiner to Principal Parties, 11:49 a.m. January 2, 2018 (setting Motion response deadline)
- Exhibit 9036: E-mail, Rodabough to Hearing Examiner, 8:02 a.m. January 3, 2018 (response to Motion)
- Exhibit 9037: E-mail, Aramburu to Hearing Examiner, 2:02 p.m. January 3, 2018 (response to Motion)
- Exhibit 9038: E-mail, Pratt to Hearing Examiner, 3:02 p.m. January 3, 2018 (reply to responses)
- Exhibit 9039: E-mail, Rodabough to Hearing Examiner, 3:30 p.m. January 3, 2018 (reply to Aramburu response)
- Exhibit 9040: E-mail, Hearing Examiner to Principal Parties, 3:39 p.m. January 3, 2018 (granting Motion for Continuance)
- Exhibit 9041: E-mail, Aramburu to Hearing Examiner, 3:59 p.m. January 3, 2018 (concern regarding review time)
- Exhibit 9042: E-mail string, Hearing Examiner and Principal Parties, January 4 – 11, 2018 (selecting new hearing date and additional document pre-filing guidance)
- Exhibit 9043: E-mail string, Pratt – Hearing Examiner, January 12, 2018 (correcting document pre-filing date)
- Exhibit 9044: E-mail string among the principal parties, April 11 – 16, 2018 (selecting date for conclusion of the hearing)

Pursuant to RoP 224(d), the City pre-filed Exhibits 1 - 74 and provided an index listing of those exhibits. Pereyra objected to entry of Exhibit 74. After entertaining brief argument on the objection, the Examiner denied the objection and entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from the Department as follows:

- Exhibit 75: City Proposed Conditions: Impervious Surface and Open Space, filed June 19, 2018
- Exhibit 76: Highlighted version of Exhibit 62, pp. 3 and 5, filed June 19, 2018
- Exhibit 77: Highlighted version of Exhibit 63, pp. 19 and 21, filed June 19, 2018
- Exhibit 78: Highlighted version of Exhibit 64, pp. 3.02 – 3.04, filed June 19, 2018
- Exhibit 79: Highlighted version of Exhibit 65, p. C1, filed June 19, 2018

Pursuant to RoP 224(e), Pereyra pre-filed Exhibits 1001 - 1019 and provided an index listing of those exhibits. Neither the City nor Cantor objected to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

Pursuant to RoP 224(f), Cantor pre-filed Exhibits 2001 - 2022 and provided an index listing of those exhibits. Pereyra objected to entry of Exhibit 2015. After entertaining brief argument on the objection, the Examiner denied the objection and entered those exhibits into the hearing record.

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The Deputy City Clerk has the record copy of all exhibit index lists and exhibits.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

MOTIONS

Three potentially dispositive Motions and three requests for reconsideration were filed before the hearing started.

On June 19, 2017, Cantor filed a Motion to Dismiss Pereyra's appeal on the grounds that it was untimely filed: The appeal was incomplete when timely filed and the missing materials were untimely filed ("Motion 1"). On July 7, 2017, after considering responses from the other principal parties, the Examiner entered an Interlocutory Order denying Motion 1 based on the doctrine of excusable neglect ("Order 1"). (Exhibits 9011; 9014; 9016; 9020)

On August 18, 2017, Pereyra filed a Motion seeking summary judgment on vesting ("Motion 2"). Pereyra asked the Examiner to rule that the Cantor short subdivision application was not vested to October, 1999, regulations, but rather to March 30, 2017, regulations. On October 2, 2017, after considering responses from the other principal parties, the Examiner entered an Interlocutory Order holding that: The short subdivision application was vested as of November 29, 1999; although the short subdivision application itself was vested to 1999 critical areas regulations, future uses must meet those regulations in force when an application is filed; and vesting did not apply to storm water management regulations ("Order 2"). (Exhibits 9021; 9022; 9024; 9026)

On October 6, 2017, Pereyra filed a Motion seeking reconsideration of Order 2 ("Motion 3"). On October 20, 2017, after considering responses from the other principal parties, the Examiner entered an Interlocutory Order denying reconsideration for lack of jurisdiction ("Order 3"). (Exhibits 9027; 9029; 9030; 9032)

On January 2, 2018, the City filed a Motion for a new hearing date ("Motion 4"). On January 3, 2018, after an exchange of e-mails among the principal parties and Examiner, the Examiner issued an Order by e-mail granting a new hearing date ("Order 4"). (Exhibits 9033; 9036 – 9040)

On December 27, 2017, Pereyra filed his Opening Brief. (Exhibit 1011) That Brief, *inter alia*, argued that the Examiner should reverse Order 2 on vesting. (Exhibit 1011, pp. 4 and 5) On March 28, 2018, Cantor filed his Pre-Hearing Brief. (Exhibit 2001) That Brief, *inter alia*, argued that the Examiner should reverse Order 1 on appeal timeliness (Exhibit 2001, pp. 5 – 7) and deny Pereyra's Opening brief request to revisit Order 2 (Exhibit 2001, pp. 7 & 8). However, Cantor did ask for "two minor changes for accuracy" in Order 2

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on vesting. (Exhibit 2001, p. 8) Cantor reiterated that request in his closing argument. The Examiner has not yet ruled on those requests.

The Examiner has reflected further upon the several interlocutory orders. The Examiner finds and concludes that none require revision. As for the “two minor changes for accuracy” requested in Order 2, one addresses Cantor’s view of why his application had such a long “gestation period.” Each of the principal parties has its own perceptions of the source(s) of the extraordinary delay in processing the application. The Examiner declines to delve any deeper into that topic as the cause(s) of the processing delay have no substantive bearing on the outcome of this appeal.

Interlocutory Orders 1, 2, 3, and 4 (Exhibits 9020; 9026, 9032, and 9040) are incorporated herein by reference as if set forth in full.

FINDINGS OF FACT

1. Cantor filed a two-lot short subdivision application in 1999, which the Examiner has subsequently determined became vested on November 29, 1999. (Exhibits 2; 5; 9026) Over the course of the following 18+ years Cantor submitted at least seven versions of his proposed short plat: Exhibits 5 (October 26, 1999, January 16, 2012, uncertain date in 2012, September 14, 2014, September 20, 2016, November 17, 2016); and 6 (March 29, 2017). Basically, all of the versions proposed that approximately the western one acre of the property would be set aside to protect a steep slope and overlapping stream buffer, with the remainder divided into Lot 1 (the northern two-thirds of the remainder where the Cantor residence is located) and Lot 2 (the southern one-third of the remainder which is undeveloped). No new roads or driveways would be built; Cantor has no plans to develop Lot 2 at any time in the foreseeable future. (Testimony)

DCD approved the Cantor short subdivision application on May 15, 2017. (Exhibit 1) Exhibit 6 was cited as the approved preliminary short plat. (Exhibit 1, p. 19, Condition 1) DCD’s approval was subject to 26 conditions, one of which required that the short plat be reconfigured to place the “required 50% open space ... [on] the area adjacent to the slope on the west side of the property.” (Exhibit 1, p. 20, Condition 8)

On December 11, 2017, Cantor submitted an eighth short plat design intended to demonstrate the feasibility of complying with Condition 8. (Exhibit 2015) DCD testified that it had not fully reviewed Exhibit 8. DCD did state that a note on Exhibit 8 regarding possible uses of designated open space was inconsistent with code. (Testimony)

DCD presented two additional conditions during the hearing that it urges the Examiner to impose should he deny the Pereyra appeal. (Exhibit 75) In addition, Condition 15 contains a typographical error: 218th should be 208th. And Conditions 6, 9, 17, 25, and 26 cite the 1998 King County Surface

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Water Design Manual ("1998 KCSWDM") as the controlling stormwater control manual. Those citations are incorrect given Order 2. (Exhibit 9026)

2. The Cantor property is Lot 4 of King County Short Plat 1177028, the southerly-most lot in the short subdivision, and is accessed from the north over a private easement commonly referred to as 208th Avenue SE. (Exhibits 17.5; 18.17, p. 3; 42, last page; 2007)

The Cantor property contains 2.97 acres (129,275 square feet ("SF")). The Cantor property is a trapezoid: It's north line is 350.81 feet; its south line is 170 feet; and its north-south dimension measured along its east line is 497 feet. (Exhibit 8, Sheet 2 of 2)

Cantor purchased the property in or around 1989 and built his house in or around 1995. (Exhibit 15; and testimony)

3. The Cantor property is zoned R-1. (Exhibit 14)

Single-family residences are a permitted use in the R-1 zone. [SMC 21A.20.030(A) ⁴] The base density for the R-1 zone in 1999 was one dwelling unit per acre ("1 du/ac"). [SMC 21A.25.030(A)]

All ... short subdivisions in the R-1 zone shall be required to be clustered away from sensitive areas ... to the extent possible and a permanent open space tract that includes at least 50 percent of the site shall be created. Open space tracts shall meet the provisions of SMC 21A.30.030.

[SMC 21A.25.030(15)] In 1999 SMC 21A.30.030 provided that

When residential lot clustering is proposed, the following provisions shall be met:

(1) Any open space resulting from lot clustering shall not be altered or disturbed except as specified on recorded documents creating the open space. Such open spaces may be retained under ownership by the subdivider, conveyed to residents of the development, or conveyed to a third party. When access to the open space is provided, the access shall be located in a separate tract; and

(2) In the R-1 zone, open space tracts created by clustering required by SMC 21A.25.030 shall be located and configured ... to connect and increase protective buffers for environmentally sensitive areas as defined in SMC 21A.15.1065, The City may require open space tracts created under this subsection to be dedicated to the City, an appropriate managing public agency, or qualifying private entity such as a nature conservancy.

⁴ The reader is reminded that these code references, quotes, and citations may be found in Exhibit 43, the 1999 version of the SMC.

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4. The Cantor property is situated at the top of the eastern wall of the Ebright Creek ravine. Roughly the westerly 100 feet of the property exhibits steep slopes (up to 80%) and represents the upper portion of the east wall of the creek ravine. The remainder of the Cantor property is relatively flat. The creek itself flows from south to north between 75 – 125 feet west of the Cantor property. The Ebright Creek ravine in this area is about 80 feet deep. Except for the area immediately surrounding Cantor's residence and his driveway, the site is wooded. (Exhibits 6; 7; 28, fourth Figure; 40; 53; 1001.1; 1001.8; 1004.3 – 1004.5; 2007)
5. Ebright Creek is a Type F stream. The SMC then and now requires preservation of a 150-foot buffer from a Type F stream. [SMC 21A.50.330(1)(a) ⁵] The reach which passes adjacent to the Cantor property is Section 303(d) listed as Category 5 due to biological degradation. (Exhibits 1018; 1019) City regulations identify Ebright Creek as one of several in the City worthy of special consideration. (Exhibits 9003.C, pp. 40 and 41, Conclusions of Law E.4 and E.6) The Ebright Creek ravine ends about 1,000 feet to the north where the creek flows out onto a plain along Lake Sammamish. (Exhibit 28, third Figure)
6. The land uses on the properties abutting the four sides of the Cantor property are:
 - A. North. To the north is an acreage parcel referred to in the record as the "Frazier" property. Like the Cantor property, the Frazier property is located at the top of the east flank of the Ebright Creek ravine. Unlike the Cantor property, the Frazier property has an incised side ravine which cuts into the main ravine sidewall. A single-family residence is located just north of the side ravine. In March, 2011, a fairly significant slide occurred in that side ravine which deposited significant debris and silt in Ebright Creek. (Exhibits 1001.1; 1001.8; 1004.1; 1004.2; 1004.7; 1004.8; 1005; 2007; and testimony)
 - B. East. The *Greenbriar* subdivision ⁶ occupies the land between the Cantor property and 212th Avenue SE. *Greenbriar* was recorded in October, 2011; development work began in or around 2007, but was not completed until around 2011. *Greenbriar* consists of 44 single-family residential lots, two stormwater control tracts (Tract A: detention ponds; and Tract D: infiltration vault), and several open space/park tracts. Stormwater control Tract A, open space Tract B, and one of the residential lots abut the Cantor property. (Exhibit 18.15; 1001.1; 2002, Sheet 5 of 18)
 - C. South. The *Chestnut Estates* (formerly known as *Chestnut Lane*) subdivision borders the Cantor property on the south. Tract B, a 20-foot wide private access easement between the Cantor property and SE 8th Place in *Chestnut Estates*, Lot 9, and a small portion of Tract C, a sensitive areas tract, abut the Cantor property. A public drainage easement descends the steep

⁵ In 1999 Type F streams were known as Class 1 streams.

⁶ The subdivision was recorded under the name *Greenbriar*. (Exhibit 18.15) At different times during its review process it was apparently known as *Sammamish Highlands 2* and *Greenbrier 1, 2, and 3*. It will be referred to consistently herein as *Greenbriar*.

slope through Tract C to Ebright Creek. A surface pipe conveys stormwater runoff from the *Chestnut Estates* drainage facility through that pipe to a discharge point at the base of the ravine near Ebright Creek. (Exhibits 10; 45; 1001.1; 2008)

D. West. The “Buchan” parcel borders the Cantor property to the west. The Ebright Creek ravine passes through the Buchan parcel. The Buchan parcel was one parcel in the assemblage which comprised the *Chestnut Estates West* subdivision application. (That application was denied.) The Buchan parcel is presently a wooded, undeveloped tract. Cantor acquired a 15-foot wide drainage easement from Buchan which traverses the east side of the Ebright Creek ravine from the edge of the Cantor property to Ebright Creek. (Exhibits 6; 17.3, Figure 1 of 1 following p. 8; 25)

7. Pereyra’s appeal alleges nine errors related to DCD’s May 15, 2017, Decision: 1) An existing 8” drainage pipe running down the east face of the Ebright Creek ravine is contrary to code; 2) The application is not vested to 1999 regulations; 3) Location of proposed open space tracts does not comply with code; 4) The proposal does not comply with applicable regulations of the Erosion Hazards Near Sensitive Water Bodies (“EHNSWB”) overlay; 5) Dispersion trenches and yard drains are not allowed due to the steep slope, landslide hazard area, and the EHNSWB overlay; 6) Stormwater discharge should be through the existing *Chestnut Estates* drainage system; 7) Draining a wetland is not allowed under code; 8) Access for Lot 2 should not be allowed from the south; and 9) Stormwater discharge will adversely impact Ebright Creek.⁷ (Exhibits 9001; 9002) The appeal assigns error to only one specific Finding and one specific Conclusion in the Decision, both related in Issue 2, vesting.⁸ The appeal asks the Examiner to reverse approval of the short subdivision or impose additional conditions to bring it into compliance with code. (Exhibit 9001)
8. Pereyra presented two expert witnesses: Derek Booth, PhD. (“Booth”) and William Lider, PE (“Lider”). Their *curricula vitae* are contained in Exhibits 1003 and 1002, respectively.

Booth discussed his role in the development of King County’s East Lake Sammamish Basin Plan and associated SO-190 overlay (the forerunner of the EHNSWB overlay) in the 1980s and early ‘90s. He asserted that the intent was to apply the SO-190/EHNSWB overlay to all steep-sloped areas which drained to Lake Sammamish and that applicable regulations should be applied thusly. He asserted that geologic reality should supersede regulatory lines. He also asserted that the No-disturbance area within the EHNSWB overlay extends all the way down a stream course to the point where the stream exits its ravine onto the plain along Lake Sammamish. Booth opposes the use of yard drains and dispersion trenches on the Cantor property; he suggests that subsurface discharge is preferable. (Testimony)

⁷ The Examiner agrees with Cantor that items raised in comment letters submitted before a decision is rendered cannot be boot-strapped into an appeal by reference to the earlier comment letter. Therefore, such topics are not addressed herein.

⁸ Issue 1 names a Finding, but only as a place reference.

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Lider focused on his interpretation of how the 2016 KCSWDM should be applied to the Cantor short subdivision application. Lider essentially contends that much more detailed analysis and preliminary design should have been provided, without which he contends the application should not have been approved. (Exhibits 1001; 1013; and testimony)

9. Prior to the development of *Greenbriar*, that site consisted of six acreage parcels, each containing a single-family residence, accessory buildings, and open fields. The area sloped generally towards the northwest corner to a culvert running beneath the Cantor driveway. Surface runoff flowed through that culvert and down the side ravine on the Frazier property to Ebright Creek. A ditch carried water about 175 feet from one of the site's driveways to a manmade pond which overlapped onto the Cantor property. The pond had been divided into two cells prior to Cantor's purchase of his property, with the dividing berm more or less along the Cantor property line. The eastern portion of that two-cell pond is now located in *Greenbriar* Tract B. (Exhibits 52; 1001.3; 2002, Sheets 2 and 5 of 18; and testimony)
10. In or around 1990 the area that was to become *Greenbriar* flooded. Cantor observed water from those fields flowing across a low area on his property and down the steep slope to Ebright Creek. In or around 1995 Cantor installed, by hand, a 6" pipe running from near his east property line to more or less the crest of the ravine where it enlarges to an 8" pipe which lies on the surface of the steep ravine slope down to the bottom of the ravine near Ebright Creek. He placed rocks at the mouth of the pipe to disperse flows. In 2012 Cantor acquired a 15-foot wide drainage easement from Buchan covering the location of the 8" pipe he had installed in or around 1995. (Exhibits 7; 15; 25; 27, Appendix A; 51; 1001.2; 2004; and testimony)

A number of small pipes were installed by other parties through the berms in the two-celled pond to allow water to enter and leave the ponds. (*Op. Cit.*)

In the mid- to late-2000s Sammamish Plateau Water ("SPW," formerly known as Sammamish Plateau Water and Sewer District) acquired an easement along the east edge of the Cantor property to install water and sewer lines to serve *Chestnut Estates*. That installation involved trenches up to about 20 feet deep in some places. SPW removed all drainage pipes that it encountered and replaced them with new pipes after completion of its trenching activities. (Exhibits 7; and testimony)

11. *Greenbriar* has a fairly complex stormwater control system (which is still in its maintenance and defect period with the City). Runoff from most impervious surfaces in the subdivision is collected and conveyed into the large, two-cell detention pond in Tract A. Runoff from the lot abutting the Cantor property and the portion of the private access road to its north is an exception: It sheet flows into Tract B. As water leaves the detention pond it passes through a small storm filter vault before entering a large infiltration vault. Overflow, if any, from the infiltration vault is piped around the detention pond and discharged into a ditch which flows to the northwest corner of the site, passes under Cantor's driveway in the previously mentioned culvert, and flows down the side ravine on the Frazier property to Ebright Creek. In the event the detention ponds were to exceed capacity, an

emergency overflow spillway would discharge into Tract B. Thus, the only stormwater that enters the manmade pond on Tract B under current conditions is that from the lot abutting the Cantor property, the road to its north, and, in an emergency condition, overflow from the detention pond. (Exhibits 2002, Sheets 5, 7, and 10 of 18; 2007; and testimony)

12. Exhibit 6 depicts two critical areas tracts (Tracts A and B) and five open space tracts (Tracts C – G) in the approved short subdivision. Tracts A and B together contain 45,324 SF. Tracts C – G collectively contain 19,354 SF. Two of the open space tracts (Tracts D and E) abut the critical areas tracts along the west side of the property. The remaining open space tracts are narrow strips along the east edge of the property. (Exhibit 6, Sheet 2 of 2)

DCD concluded that the placement of the open space tracts did not comply with SMC 21A.30.030(2) because the three tracts along the east property line did not contribute to protection of the critical areas tracts along the west edge of the property. (Exhibit 1, p. 15, § 3.1.8, bullet 9) Therefore, DCD imposed Condition 8 on its approval of the short subdivision: “The required 50% open space shall be relocated to the area adjacent to the slope on the west side of the property. The 15-foot building setback from the 50-foot buffer may count as open space.” (Exhibit 1, p. 20)

Cantor subsequently submitted a revised preliminary short plat in response to DCD’s Condition 8. The revision increased the area of Tracts A and B by 151 SF to 45,475 SF, included the 15-foot wide required building setback area in the open space tracts, and reduced the number of open space tracts to two: Tract C, a 15,805 SF tract adjacent to critical areas Tract A, and Tract D, a 3,362 SF tract adjacent to critical areas Tract B. The total open space area, including the critical areas tracts, now slightly exceeds 50% of the total site area and is all focused along the Ebright Creek ravine. (Exhibit 2015)

13. Chapter 21A.85 SMC was titled “Property Specific Development Standards – Special District Overlays” in 1999. Section 21A.85.060 was titled “Special district overlay – Erosion hazards near sensitive water bodies.” (Exhibit 43)

Subsection 21A.85.060(2) SMC opens as follows: “General Development Standards. The following development standards shall be applied to all properties within the erosion hazard near sensitive water body overlay”. [Emphasis added] Seven sub-subsections follow, (a) – (g), each establishing certain restrictions or containing guidance: (a) – No-disturbance area restrictions; (b) – Guidance on delineation of No-disturbance area boundaries; (c) – Infiltration requirements for sites that drained onto No-disturbance Areas; (d) – Requirements if infiltration is not possible; (e) – Impervious surface limit for sites that cannot infiltrate runoff; (f) – A reasonable use exception provision; and (g) – Guidance on when DCD’s director may modify the requirements of (a) – (e).

14. Special district overlays, including the EHNSWB overlay, “shall be designated through the area zoning process”. [SMC 21A.85.020(3) and .040(1) and (2)] The Cantor property is not located within any officially established EHNSWB overlay zone. (Exhibits 54; 59, p. 2; 1006; 1015)

Therefore, none of the requirements within SMC 21A.85.060(2) apply to the Cantor short subdivision.

The drainage easement on the Buchan property is on a parcel which is located within an officially established EHNSWB overlay zone and is also located within a No-disturbance area. (Exhibit 74) However, that drainage easement is not part of the property being short subdivided. It is simply an off-site drainage easement of the type not infrequently encountered in development applications.

The City has allowed drainage pipes to be installed across No-disturbance areas in the past. (Exhibits 62/76, 63/77, 64/78, and 65/79⁹) Clearing or development are generally not allowed within No-disturbance areas. [SMC 21A.85.060(2)(a)] Clearing is “the limbing, pruning, trimming, topping, cutting or removal of vegetation or other organic plant matter by physical, mechanical, chemical or other means.” [SMC 21A.15.195] Development activity is “any residential construction or expansion of a building, structure or use, and change in use of a building or structure, or any change in the use of land that creates additional demand for school facilities.” [SMC 21A.15.300] The City’s position is that placing a drainage pipe on a steep slope without removing vegetation is neither clearing nor development. (Exhibit 58, p. 2) The Examiner concurs.

15. The Cantor property is covered with 6 – 12 inches of topsoil, below which is 1.5 – 2.0 feet of weathered soil underlain by dense glacial till. (Exhibit 30) The steep ravine side wall exhibits signs of “shallow surface movement, such as curved tree trunks”. (Exhibit 27, unnumbered p. 3) Any runoff water infiltrated into the weathered soil layer “would simply flow along the top of the underlying dense soil and daylight on the adjacent slope as seepage. This increase in seepage along the slope could result in more frequent slope failures.” (*Ibid.*) The professional recommendation is that runoff be “piped to a suitable outfall location and not infiltrated onsite.” (*Ibid.*)
16. Runoff from development of Lot 2 could not be conveyed into the *Chestnut Estates* stormwater pond because of elevation incompatibilities. (Exhibit 48)
17. Cantor submitted a cursory Level 1 Downstream Drainage Analysis (Exhibit 28), a conceptual drainage plan (Exhibit 7), calculations of the 8” pipe’s capacity (Exhibit 29), and a compliance feasibility study (Exhibit 68), the latter prepared by Donna Breske, P.E. (“Breske”), after DCD’s approval of the short subdivision. (Breske’s *curriculum vitae* is found at Exhibit 2020.)

The preliminary drainage plan depicts facilities on proposed Lot 2 for a future residence on that lot. It shows a yard drain interceptor pipe leading to the 8” pipe on the face of the ravine, upgrade of that pipe to 8” welded HDPE pipe, and a 50-foot dispersion trench with notched board on Lot 2. With respect to the latter, a textual note advises that it depicts the “approx. location of future storm water flow control BMP [whose] design/location to be determined with future Lot 2 building permit.” (Exhibit 7, Keynote 8; most capitalization omitted)

⁹ Exhibits 76 – 79 are enlargements of portions of Exhibits 62 – 65.

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Breske opined that drainage review was not required for preliminary short subdivision approval, but went on to conclude that drainage control could be implemented on the site in compliance with the 2016 KCSWDM. (Exhibit 68)

18. Haim Strasbourger, P.E. (“Strasbourger”), the City’s Development review Engineer, disagrees with Breske regarding the need for drainage review at the preliminary short subdivision stage, but agrees with Breske that compliance with applicable standards can be achieved. Strasbourger believes that the submitted drainage information is sufficient for preliminary short subdivision review. (Exhibit 69; and testimony)
19. One of the requirements for approval of a preliminary short subdivision application is conformance with the KCSWDM as adopted by Chapter 15.05 SMC. [SMC 19.35.080(1)(a); see also SMC 15.05.010]

The City adopted the 2016 KCSWDM subject to numerous changes contained within an Addendum. (Exhibit 2017, Ordinance No. O2016-428, § 3) One such change is to redefine “critical drainage area” to include “all landslide hazard drainage areas.” (Exhibit 2017, p. 15) The Addendum amends 2016 KCSWDM § 1.1.1 by adding two items to the list of conditions which trigger drainage review for listed development applications, one of which is “Projects located in landslide hazard drainage areas that will result in 500 square feet or more of new impervious surface.” (Exhibit 2017, p. 16) Short subdivisions are one of the developments that require drainage review if any of the conditions are met. (Exhibit 2016, p. 22 ¹⁰) Since most of the Cantor property is located within a landslide hazard area above Ebright Creek (See Finding of Fact 22, below.), Public Works has authority to determine it to be a landslide hazard drainage area, which would trigger drainage review for the preliminary short subdivision application if it “will result in 500 SF or more of new impervious surface.” (Exhibit 2017, p. 15)

The proposed short subdivision *per se* will not create any new impervious surfaces as no construction is required or proposed. One could reasonably assume that future development of Lot 2 would create at least 500 SF of impervious area.

20. In preparation for filing an application to build his residence, Cantor hired a consultant to perform a wetland evaluation of the Cantor property. On October 14, 1994, the consultant issued a report finding that the portion of the small pond on the Cantor east property line constituted an isolated depressional wetland “with no defined inlet or outlet.” (Exhibit 19, Terra Associates, Inc. October 14, 1994, letter report, p. 1) Cantor subsequently recorded a Sensitive Area Notice against title as required by King County at the time. (Exhibit 19)

In October, 2006, Cooke Scientific described a “partially-vegetated pond” on the *Greenbriar* site which it believed to be an excavated feature, not a natural wetland. (Exhibit 20, May 4, 2007, letter

¹⁰ Exhibit 2016 has two parallel page numbering systems: The chapter-page number system of the original document and a simple sequential page number that has been added. The Examiner will use the latter for citations due to its simplicity.

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report, p. 1) In June, 2007 the developer of *Greenbriar* retained Wetland Resources, Inc. ("WRI") to conduct a site investigation to evaluate the pond along the west edge of the *Greenbriar* site. WRI found that the eastern cell of the pond was being actively maintained while the western cell (the portion on the Cantor property) was not being maintained. WRI found three point discharges into the eastern portion of the pond. WRI concluded that the two-cell pond was "a man-made pond excavated from non-wetland area." (Exhibit 20, June 7, 2007, letter report) In a July 19, 2007, letter to DCD, ESA Adolfson concurred with WRI that the pond was not a regulated wetland. (Exhibit 20, July 19, 2007, letter report) WRI was subsequently asked to locate any jurisdictional wetlands on two acres (apparently located in the southwest corner) of that site. WRI found no wetlands present. (Exhibit 20, December 20, 2007, letter report) In June, 2008, the City's then resident wetland biologist concurred that the pond is not a regulated wetland. (Exhibit 23)

WRI investigated the Cantor property in December, 2011, after development of *Greenbriar*, for the presence of wetlands. Its investigation focused on the pond. WRI noted that the previously identified point sources for the pond had been removed. It identified the source of water in the pond as surface runoff from portions of *Greenbriar*. (See Finding of Fact 11, above.) It noted that the pond's outfall was about two feet higher than the observed water level. (Exhibit 21)

On June 4, 2017, The Watershed Company ("TWC") visited the Cantor property at the City's request to evaluate the pond and its outlet. TWC observed one stormwater outfall to the eastern cell of the pond and one outlet from the pond cell on the Cantor property. That pipe is located above the pond's ordinary high water line and, thus, presumably carries flows only during peak storm events. That pipe discharges a short distance to the west into an open ditch which eventually flows into the 8" pipe traversing the steep slope. TWC concluded that the pond is not a wetland. (Exhibit 50)

The pond along the east side of the Cantor property is not a regulated wetland.

21. The Cantor property exhibits two soil types: Alderwood gravelly sandy loam, 8 to 15 percent slopes (AgC) and Alderwood and Kitsap soils, very steep (AkF). As would be expected, the AgC soils are on the flatter portions of the property and the AkF soils are in the Ebright Creek ravine. (Exhibit 1017)

Erosion hazard areas by definition include properties exhibiting Alderwood and Kitsap soils on slopes or 15% or steeper. [SMC 21A.15.415] All portions of the Cantor property exhibiting a slope of 15% or more are thus erosion hazard areas by definition.

Erosion hazard areas are subject to five special regulations. [SMC 21A.50.220] Three of those regulations require limitations on both amount and timing of clearing [SMC 21A.50.220(1)], mandatory preparation of a temporary erosion control plan [SMC 21A.50.220(2)], and potential prohibition of use of chemicals [SMC 21A.50.220(5)]. Subsection 21A.50.220(3) SMC imposes additional requirements on subdivisions and short subdivisions: Lot clearing is prohibited until building permits are approved for that lot except under special circumstances and restoration of

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damaged vegetation on individual lots is required. Subsection 21A.50.220(4) SMC authorizes the City to require downstream water quality monitoring in special situations.

None of the requirements prohibit development in erosion hazard areas.

22. As has been previously noted, the Cantor property exhibits slopes in excess of 40% associated with the Ebright Creek ravine.

Landslide hazard areas by definition include properties with a combination of slopes steeper than 15%, impermeable soils, and springs or groundwater seepage. In addition, any area that has shown soil movement in the last 10,000 years is also considered a landslide hazard area. [SMC 21A.15.680] All portions of the Cantor property exhibiting a slope of 15% or more are thus landslide hazard areas by definition. (Exhibit 1016)

Landslide hazard areas are required to be protected: The hazard area, plus a buffer of 50 feet from all edges of the area, plus a 15-foot building setback must be set aside and protected. [SMC 21A.50.260(1)] Vegetation removal within the protected area is generally prohibited. [SMC 21A.50.260(2)] A landslide hazard area of 40% or greater slope may be altered only if the alteration complies with SMC 21A.50.280. [SMC 21A.50.260(4)(a)] One permitted alteration is installation of surface water conveyances authorized by the KCSWDM. [SMC 21A.50.280(4)(a)]

23. Both Exhibits 6 and 2015 include a 150-foot buffer from Ebright Creek and a 50-foot buffer from the top of the steep slope (the 40% slope line). The steep slope buffer extends beyond the stream buffer. Thus, the effective width of the creek buffer is greater than 150 feet. In addition, both preliminary short plats include a 15-foot building setback line from the outer edge of the steep slope buffer.
24. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ¹¹

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A short subdivision is a Type 2 land use application. [SMC 20.05.020, Exhibit A] An appeal from the Department's action on a Type 2 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

¹¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Vested rights considerations were decided through Order 2 in response to Motion 2.

Standard of Review

The standard of review is preponderance of the evidence. The appellant has the burden of proof. [RoP 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. City ordinances are subject to the same rules of interpretation and construction as apply to statutes. [*Tahoma Audubon Soc. v. Park Junction Partners*, 128 Wn. App. 671, 116 P.3d 1046 (2005); *Neighbors v. King County*, 88 Wn. App. 773, 778, 946 P.2d 1188 (1997)] Courts, and by extension quasi-judicial decision makers, “do not construe a statute that is clear and unambiguous on its face. We assume that the legislature means exactly what it says, and we give words their plain and ordinary meaning. Statutes are construed as a whole, to give effect to all language and to harmonize all provisions.” [*Ockerman v. King Cy.*, 102 Wn. App. 212, ___ P.2nd ___ (Div. I, 2000); see also: *Western Petroleum v. Freidt*, 127 Wn.2d 420, 424, 899 P.2d 792 (1995), holding that intent is relevant only if ambiguity exists in the language of the code; *State v. Azpitarte*, 140 Wn.2d 138, 141, 995 P.2d 31 (2000), holding that clear and unambiguous codes are not subject to judicial construction] Legislative history cannot override an unambiguous code provision. [*Kirtley v. State*, 49 Wn. App. 894, 898, 748 P.2d 1148 (1987)]

2. Subsection 20.10.080(2)(b) SMC provides that an administrative appeal to the Examiner “shall identify the decision being appealed and the alleged errors in that decision.” The Pereyra appeal clearly identifies the decision being appealed, but raises virtually all of its issues without ever specifically citing a Finding, Conclusion, or Condition alleged to be erroneous in some fashion. In other words, the appeal does not ever specify precisely which sections of the DCD decision are erroneous. The Examiner finds this troublesome as it leaves the Examiner guessing as to exactly with which Findings, Conclusions, or Conditions Pereyra takes issue.

Rather than deny the appeal outright for failing to adequately specify the alleged errors in the DCD decision, the Examiner will address the nine appeal issues with the same level of generality with which they are raised in the appeal.

3. Appeal Issue 1. The existing 8” drainage pipe which is the topic of this issue was installed over 20 years ago. The appeal of a preliminary short subdivision is neither the right time nor place to challenge the legality of that pipe’s installation.

Appeal Issue 1 will be denied.

4. Appeal Issue 2. Appeal Issue 2 was addressed in the context of Motion 2 and denied by Order 2. Nothing more is required.

Appeal Issue 2 has been denied (except for the slight month and day change in the vesting date as explained in Order 2).

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5. Appeal Issue 3. There really was no dispute on this issue: DCD concluded that the open space configuration shown on Exhibit 6 did not comply with applicable criteria and, thus, imposed Condition 8 to require its relocation on the west side of the property adjacent to the protected critical areas.

What Pereyra really objects to is DCD's approval of the short plat before receiving a re-design. Pereyra correctly notes that that sequence leaves approval of the re-design entirely in the administrative hands of DCD without any right of citizen appeal. The SMC contemplates the right of citizen appeal from a DCD decision approving (or denying) a preliminary short subdivision. In this case, there would be no right of citizen appeal of whatever design were to be finally approved by DCD.

The Examiner shares Pereyra's concern. The Examiner also recognizes that SMC 19A.12.040 provides a substantial degree of latitude by which DCD may consider and approve revisions to short subdivisions after their approval, not necessarily subject to a right of appeal.

The Examiner need not reach a conclusion on the efficacy of Condition 8 in this case because Cantor has presented an alternative design in response to Condition 8. (Exhibit 2015) Exhibit 2015 has been available to all parties since it was filed with the rest of Cantor's exhibits near the end of March. All parties knew the purpose for which it was prepared and submitted (The Cantor exhibit list expressly describes its purpose.); all parties had more than two and one-half months to consider it before the last hearing day on June 19th.

The Examiner concludes that Exhibit 2015 complies with applicable open space requirements and should be the approved preliminary short plat. However, the Examiner shares DCD's and Pereyra's concern regarding "Notes" #1 on Sheet 2 of 2 about activities within the open space. As written, Note 1 essentially provides a wide open authority to clear vegetation within the open space tracts for lawn or most any purpose. Required open space is not to be altered or disturbed except as expressly authorized. [SMC 21A.30.030(1)] Turning open space into lawn area would totally defeat the intent of open space as an adjunct to protected critical areas. Since "[a]pproved surface water conveyances" may be placed on steep slopes [SMC 21A.50.280(4)(a)], it would be reasonable to allow such conveyances to cross through the open space to reach the discharge pipe on the steep slope.

Condition 1 will be revised accordingly and Condition 8 will be deleted (as it is no longer needed).

6. Appeal Issue 4. The clear and unambiguous language of the 1999 version of the SMC is extremely important to the resolution of this issue. First, the SMC says that overlay zones are to be officially established through the rezone process. Not one single map in this voluminous record shows any part of the Cantor property within the EHNSWB overlay zone. On every map in the record the west boundary of the Cantor property is the east edge of the EHNSWB overlay zone in this area.

Second, SMC 21A.85.060(2) states that the “development standards” in subsections (2)(a) through (2)(g) apply “to development proposals located within [the EHNSWB overlay zone]”. [Emphasis added] The development site must be within the EHNSWB overlay zone in order for any of the requirements of subsections (2)(a) through (2)(g) to apply. Since the Cantor property is not located within the EHNSWB overlay zone, the No-disturbance area provisions in (2)(a) and the runoff retention requirements in (2)(c) simply do not apply at all in this case.¹²

Third, the fact that the off-site drainage easement is within both the EHNSWB overlay zone and its No-disturbance area does not prevent installation of a surface stormwater discharge pipe through it. Laying such a pipe on the surface does not constitute either clearing or development. Thus, it is not prohibited under SMC 21A.85.060(2)(a). As a practical matter, allowing stormwater runoff from the plateau to be tight-lined down the steep slope is the better and safer way to go: The geotechnical reports in this record indicate that infiltrating runoff this close to the edge of the ravine would be a recipe for disaster.

Fourth, the argument that the No-disturbance area includes the much less steep ravine bottom all the way downslope until the ravine opens out onto the plain is simply not persuasive. The ravine bottom is bordered on two sides by steep slopes, but is itself not a steep slope area. If it were treated as such, all developments along its course would have to acquire drainage easements crossing multiple properties to the end of the ravine. Among other unintended consequences of such an interpretation would be removal of much base flow from the upper reaches of the ravine, most likely exacerbating or extending any non-flow periods in the creek and potentially harming salmonid habitat.

Appeal Issue 4 will be denied.

7. Appeal Issue 5. Much of the argument on Appeal Issue 4 also applies to this issue and will not be repeated.

It should be noted that the depiction of a dispersion trench on Exhibit 7 was clearly not intended to be a definitive proposal. The Keynote associated with that feature makes that abundantly clear.

It is also worth noting that none of the conditions in DCD’s decision approve or adopt Exhibit 7 as the drainage plan for the short subdivision. The City has clearly and, the Examiner believes, correctly viewed Exhibit 7 and related exhibits as simply evidence that future development will be able to meet expected surface water control requirements. It must be remembered that approval of this short subdivision will not directly result in the construction of anything: No streets have to be built for

¹² Booth argued eloquently that geologic reality should control and that since the eastern wall of the Ebright Creek ravine extends onto the Cantor property, the Cantor property should be treated as within the EHNSWB overlay zone. While that may seem logical from a scientific perspective, it is not what the adopted code calls for. If the City’s legislative officials want to expand the EHNSWB overlay zone to address situations such as that presented here, they may do so with appropriate legislative action. It is not up to the Examiner’s prerogative to guess what legislative action the City Council may wish to take in this or any case. The Examiner applies the code as it is written, not as some may wish it had been written.

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access, no driveways are imminent, no houses are imminent. This is simply creating one lot that, maybe, some day will be developed. If and when that time comes, whatever is proposed will be required to comply with all applicable drainage requirements.

Appeal Issue 5 will be denied.

8. Appeal Issue 6. The evidence demonstrates convincingly that stormwater from some future development on Lot 2 cannot be conveyed to the *Chestnut Estates* stormwater detention pond as proposed in the statement of this issue because of grade incompatibility. The proposal simply won't work.

Appeal Issue 6 will be denied.

9. Appeal Issue 7. The overwhelming evidence is that there is not now and never has been a wetland on the Cantor property. Therefore, this issue is without merit.

Appeal Issue 7 will be denied.

10. Appeal Issue 8. Pereyra did not develop this issue during the hearing. The Examiner cannot see a legitimate reason why development of Lot 2 should be prevented from taking access over the access tract provided for that purpose within *Chestnut Estates*. In fact, access from the south may well reduce the amount of driveway pavement required, thus reducing impervious surfaces and the amount of stormwater runoff that would have to be handled.

Appeal Issue 8 will be denied.

11. Appeal Issue 9. Appeal Issue 9 is somewhat of a catch-all or summary complaint about drainage discharge to Ebright Creek. Other than doubting the efficacy of a drainage discharge system that would comply with the 2016 KCSWDM, this issue was not particularly well developed. The Examiner concludes that if stormwater is controlled in accordance with the 2016 KCSWDM (or later manual should such be applicable if and when Lot 2 is actually developed), Ebright Creek will be adequately protected as required by applicable regulations.

This Conclusion of Law in no way conflicts with the Examiner's Conclusions of Law in the *Chestnut Estates West* Decision. The Examiner there objected to the proposal to reduce the Ebright Creek protective buffer from 150 feet to 15 feet from the lip of the ravine – well less than 150 feet. It was the reduction in buffer width that was of concern. (Exhibit 9003.C, p. 41, Conclusion of Law E.6, ¶ 2) Here, the approved buffer is greater than 150 feet.

Appeal Issue 9 will be denied.

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12. Although strictly speaking not directly a part of any of the appeal issues, there are a few minor items that should be “cleaned up” in DCD’s decision. First, all references to the 1998 KCSWDM as the controlling surface water management manual should be revised to the 2016 KCSWDM because of Order 2.

Second, the scrivener’s error in Condition 15 needs to be fixed: Access to Lot 1 is currently from and will remain from 208th Avenue SE, not 218th Avenue SE.

13. The Examiner declines to add either item in Exhibit 75 to the list of conditions.

The first suggested addition is unnecessary. The first sentence references impervious surface limits in Chapter 21A.12 SMC. That chapter had been renumbered as Chapter 21A.25 SMC in Exhibit 43, the code version used by the parties during the hearing. Subsection 21A.25.030(A) sets 30% as the maximum permissible impervious surface limit per lot. A mandatory code requirement need not be listed as a condition of approval. Because Exhibit 2015 has notes regarding impervious surface limits, and since it cannot be accurately determined from the available evidence whether those stated limits comply with the code mandate, the Examiner will add a clause stating that mandatory code requirements supersede any contrary notation on the preliminary short plat.

The second sentence refers to an EHNSWB requirement. Since EHNSWB requirements do not apply to the Cantor short subdivision, that requirement cannot be imposed.

The second suggested condition is also unnecessary. It would essentially replace Condition 8. But since the Examiner is approving Exhibit 2015 (with conditions), Condition 8 is unnecessary as would be its substitute.

14. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **DENIES** Appeal Issues 1, 4, 5, 6, 7, 8, and 9 as specified above; Appeal Issue 2 is resolved as provided by Order 2; Appeal Issue 3 is resolved by Revisions A and B, below. The May 15, 2017, Decision (Exhibit 1) is **SUSTAINED SUBJECT TO THE FOLLOWING REVISIONS:**

- A, Condition 1 is revised to read:

The plat configuration shall be developed in substantial conformance with the development plan set prepared by the Platator and attached hereto as Exhibit 2015 and subject to the conditions of approval specified in this decision; PROVIDED that, 1)

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“NOTES” #1 shall be replaced with the following statement: “Open Space Tracts C and D shall remain in their natural, undisturbed condition except that an approved surface water conveyance may be placed across one or the other if necessary to comply with surface water control requirements.” and 2) Mandatory code requirements supersede any contrary notation on the preliminary short plat. Any conflicts shall be resolved prior to recordation of the final short plat.

B. Condition 8 is revised to read:

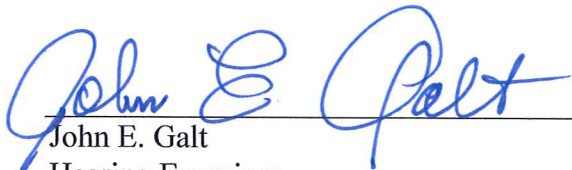
[Deleted]

C. Conditions 6, 9, 17, 25, and 26 are revised by replacing “1998” in each with “2016”.

D. Condition 15 is revised to read:

Access to Lot 1 shall remain using 208th Ave SE.

Decision issued July 10, 2018.


John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹³

Richard Aramburu, unsworn counsel
Kim Adams Pratt, unsworn counsel
Derek Booth
Wally Pereyra
Ryan Harriman
Tom Redding

Samuel Rodabough, unsworn counsel
Alexandra Kenyon, unsworn counsel
William Lider
Clifford Cantor
Haim Strasbourger
Donna Breske

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the

¹³ The official Parties of Record register is maintained by the City’s Hearing Clerk.

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procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act.. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."